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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/138,926	08/24/1998	FRANK C. CESARE	D-6362	4707

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/25/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/138,926

Applicant(s)

CESARE

Examiner

Sandra M. Nolan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Claims 1-30 are pending.

Rejections Withdrawn

2. The 35 USC 102 rejection of claims 1-6, 8-10, 14-19, 21-22 and 25-30 as unpatentable over Allen et al (US 4,960,829), as stated in section 7 of the 20 February 2003 office action (Paper No. 21), is withdrawn in view of applicant's arguments in the 21 July 2003 response (Paper No. 23).
3. The 35 USC 103 rejection of claims 7, 11-13, 20, and 23-24 as unpatentable over Allen, as set forth in section 10 of Paper No. 21, is withdrawn in view of applicant's arguments in Paper No. 23.

New Rejections

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-10, 13-22 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Meynard (US 3,890,263).

Meynard teaches compositions containing a granulated mixture of an ethylene/propylene/non-conjugated diene copolymer (col. 3, lines 39-55), a polyolefin with a molecular weight of 2,000 to 500,000 (col. 4, lines 3-6) and up to 50% mineral

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filler (col. 4, lines 48-54). The copolymer contains 54 to 77% ethylene, 0 to 5% diene and the balance propylene (col. 2, lines 25-36), has a molecular weight of 2,000 to 500,000 (col. 2, lines 39) and is a granulate at 121°C (col. 5, lines 8, 36 and 52). Its compositions can be used as impregnates and as road carpets (col. 2, lines 16-24).

The use of the copolymer as a granulate at 121°C means that it is solid at room temperature.

The properties of claims 9 and 22 would be inherent in the polymers of Meynard given their chemical identity.

Claim 28 deals with intended use and do not serve to distinguish the claimed articles from those made by Meynard.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 11-12 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meynard in view of Frances (US 4,514,541).

Meynard is discussed above. It fails to teach aramid fibers.

Frances teaches compositions containing aramid fibers, an Eastover, and a filler (abstract). Its compositions are used to incorporate the aramid fibers into other lassoers (col. 2, lines 3-6).

The references are analogous because they both teach filled Eastover compositions.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the aramid fiber of Frances to reinforce the compositions of Meynard in order to improve the strength of articles made therefrom.

The motivation to employ the aramid fibers of Frances in the compositions of Meynard is found at col. 1, lines 14-17 of Frances, where the use of fiber reinforces is said to improve the modulus of the elastomers and to increase their resistance to stretch.

It is deemed desirable to make fiber-reinforced articles from elastomeric compositions so that the articles retain their shape.

9. Claims 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frances in view of Meynard.

Frances is discussed above. Note that, at col. 2, lines 3-6, it teaches that its elastomer/aramid compositions are used to incorporate aramid fibers into other elastomers.

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Meynard is discussed above. Note that, at col. 1, lines 41-46, it teaches that its copolymers, when used with bitumens, improve their tensile strengths.

The references are analogous because they both teach filled elastomer compositions.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the copolymers of Meynard to in the compositions of Frances and add them to other elastomers in order to improve the tensile strength of articles made from elastomers containing the elastomer/fiber compositions.

The motivation to employ the copolymers of Meynard in the compositions in the compositions of Frances is found at col. 1, lines 41-46 of Meynard, where improved tensile strength is taught.

It is deemed desirable to make reinforced elastomeric articles having improved tensile strength so that they may have extended useful lives.

Response to Arguments

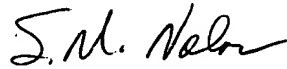
10. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

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If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/872-9306. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

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20 September 2003